

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Performance Measurements and Standards for)	CC Docket No. 01-321
Interstate Special Access)	

**REPLY COMMENTS
OF
SPRINT CORPORATION**

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Summary

Adoption of performance measures is warranted by the lack of competition in the special access market and by the increasing potential for the RBOCs to engage in discriminatory activities. None of the “evidence” cited by the RBOCs in support of their claim that the special access market is competitive – not the Joint Petition Study, not the fact that they have received special access pricing flexibility, not the voluntary tariff plans and the customer-specific performance reports – withstands scrutiny. To the contrary, the assertions of almost every IXC, CLEC, CMRS provider, and large end user that commented in this proceeding that they remain dependent on the ILECs for the overwhelming majority of their special access needs, despite widespread dissatisfaction with the quality of service provided, is the most telling evidence of the lack of competition.

Although adoption of special access performance measures and standards is warranted for the RBOCs, the Commission should not adopt any such measures or standards for CLECs, and should adopt less stringent standards for non-RBOC ILECs than apply for the RBOCs. Holding RBOCs to a higher standard than applies to non-RBOC ILECs is justified by the differences in their size and scope of operations, and is entirely consistent with Congress’ and the Commission’s actions over the past decade.

Sprint and the Joint Competitive Industry Group proposed performance measures governing special access ordering, provisioning, and maintenance and repair, that are broadly consistent. Sprint takes exception to two of the measures proposed by the Joint Competitive Industry Group, and proposes a refinement to account for “large” orders.

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REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation, on behalf of its incumbent local, competitive local, long distance and wireless divisions, hereby respectfully submits its reply to comments filed on January 22, 2002 in response to the Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding.

I. ADOPTION OF PERFORMANCE MEASURES IS WARRANTED BY THE LACK OF COMPETITION IN THE SPECIAL ACCESS MARKET AND THE POTENTIAL FOR DISCRIMINATION.

In their comments, the RBOCs assert that the special access market is already robustly competitive and that adoption of performance measures and standards constitutes unnecessary “heavy handed” regulation that will adversely affect the marketplace.¹ In support of their theory that the special market is now competitive, the RBOCs cite their Joint Petition study; the fact that they have received pricing flexibility in various MSAs;² and the voluntary measures they have taken “in response to market forces,” such as tariff plans and customer-specific performance reports.³

¹ See, e.g., BellSouth, p. 2; Qwest, p. 2; SBC, p. 2; Verizon, p. 1; USTA, p. 2.

² See, e.g., Verizon, p.6; Qwest, p. 7; SBC, p. 8; BellSouth, p. 13.

³ See, e.g., BellSouth, p. 10 (offers service along a price/performance continuum); SBC, p. 3 (citing Managed Value Plan) and 12-13 (performance reports for 5 carriers “tailored

None of the “evidence” cited by the RBOCs demonstrates that the special access market is robustly competitive today. The fatal flaws in the RBOCs’ Joint Petition have been thoroughly documented,⁴ and numerous commenting parties have explained (citing the Commission’s own language, and noting that grant of pricing flexibility has resulted in an *increase* in special access rates) why a grant of pricing flexibility cannot be construed as a finding that the special access market is competitive.⁵ However, the most telling evidence that the special access market is not yet competitive lies in the assertions of some of the largest users of special access – IXC, CMRS providers, CLECs, and very large end users – the very parties that are in the best position to assess whether acceptable competitive alternatives are available.

There is virtual unanimity among commenting IXCs, CLECs, CMRS providers, and large end users that ILECs remain dominant in the provision of special access services.⁶ Almost all of the carriers state that they use competitive alternatives (including self-provisioning) wherever possible, but still rely upon ILECs for an overwhelming majority of their special access needs (*id.*) – *despite* serious problems with the quality of service provided.⁷ This surely is not characteristic of a competitive market. As even

specifically to their needs”); Verizon, p. 3 (special access performance reports for 51 carriers).

⁴ Sprint, p. 4 and n. 3.

⁵ See, e.g., Sprint, p. 5; Mpower, p. 9; AT&T, p. 11; AT&T Wireless, p. 11; Cable & Wireless, p. 11; Time Warner/XO, p. 10; WCOM, p. 32; Ad Hoc, Appendix 1.

⁶ See, e.g., Sprint, p. 2; Mpower, p. 8; ALTS, p. 3; AT&T, p. 3; AT&T Wireless, p. 3; Cable & Wireless, p. 3; Comptel, p. 2; Time Warner/XO, p. 2; VoiceStream, p. 2; WorldCom, p. 3; Ad Hoc, p. 2; API, p. 2; New York DPS, p. 4.

⁷ See, e.g., WorldCom, p. 2 (provisioning has been “poor and unpredictable”); ALTS, p. 3 (citing section 208 complaint and *ex parte* presentations alleging “delay, poor quality, and discrimination” in the provision of special access services); Cable & Wireless, p. 5 (citing deterioration in special access performance in recent years); Time Warner/XO, p.

Qwest acknowledges (p. 9), “[i]n a competitive market, poor service performance results in consumers choosing another provider.” The only rational conclusion that can be drawn is that the special access market is simply not yet competitive.

BellSouth states (p. 12) that it offers “differing mixes of price/performance characteristics based on customer demand.” However, carriers’ continued overwhelming reliance upon ILEC-provided special access cannot be attributed to a preference for lower quality in exchange for a lower price. Neither BellSouth nor any other ILEC has ever offered Sprint lower quality special access service in exchange for a lower rate.⁸ Carriers such as Sprint are forced to accept poor quality provisioning and maintenance from the RBOCs because alternative special access facilities are not available in the locations and in the timeframes required.

RBOC assertions that they have voluntarily implemented special access monitoring programs and contract-based tariff options also are not dispositive of a competitive special access market. SBC, for example, touts its Managed Value Plan (MVP) as evidence that it is subject to competitive pressures and responsive to customer demands (p. 11). Sprint, which does not take service under this plan, would note that the plan’s “premium performance standards” come at an extremely high price (limits on the

49 (BellSouth’s poor ordering and provisioning performance); VoiceStream, p. 9 (Verizon-NY’s deteriorating service performance); API, p. 2 (“member companies have endured significant, continuing delays and problems in the provisioning of interstate special access services by...ILECs”).

⁸ The only special access contract discounts Sprint has received have been based on revenue commitments (that is, if Sprint exceeds X% growth in use of an ILEC’s special access service, we receive a Y% discount). Furthermore, the special access contract Sprint did sign specified that “any new or additional performance measures and remedies that may become applicable to the services provisioned under [the non-contract tariff]

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number of UNEs a customer and its affiliates are allowed to obtain from SWBT); that the alleged higher grade of service is not available to all special access services; and that MVP involves term (5 year) and minimum annual revenue commitments. Given the stringency of these various qualifiers, it is difficult to believe that SWBT is subject to intense competitive pressures. RBOC claims that they have developed monitoring plans for various carrier customers, and that they meet with those customers,⁹ are similarly unconvincing as proof of intense competition. IXC customers such as Sprint have met with their access vendors and have received some performance feedback since inception of the access tariff regime, prior to the rise of any alternative access vendors. Such interaction has not been notably successful in improving special access provisioning and maintenance, reducing tariffed rates over the years, or generating reasonable recompense to customers that are harmed by the RBOCs' failure to meet service level objectives.

The problems associated with the lack of robust competition in the special access market are exacerbated by the fact that the RBOCs have a greater incentive to discriminate against their non-affiliated carrier customers today than they did 10 or 15 years ago. As the RBOCs receive Section 271 authority in more and more states, they will be in the position of competing against IXCs at the same time as they are providing a key input – special access service – which those same IXCs rely upon to provide long distance service; the RBOCs have a similar incentive to discriminate against CLECs and

shall not apply to services subject to this Contract Tariff unless the Telephone Company and the customer negotiate an amendment to this Contract Tariff.”

⁹ See, e.g., Verizon, p. 3, SBC, p. 12.

CMRS providers to the extent that such actions hinder these carriers' ability to provide competitive local service.¹⁰

Presumably without intending to, Verizon confirms that it has the ability to discriminate between its end user¹¹ and carrier customers. Verizon states (p. 17) that it "has tailored its special access ordering and provisioning to accommodate the distinct preferences of its end user and carrier customers." Given this statement, it is difficult to accept Verizon's assertion (p. 11) that "there is no opportunity for unreasonable discrimination" on the basis of the identity of the customer.

BellSouth notes (p. 2) that adoption of performance measures represents additional regulatory oversight to which the RBOCs were not subject previously when there was less competition. However, the increase in regulatory oversight is necessary in light of the RBOCs' deteriorating performance¹² and the increasing possibility that discrimination and other anti-competitive acts will occur.

II. PERFORMANCE STANDARDS SHOULD VARY BY CATEGORY OF ILEC, AND SHOULD NOT BE APPLIED AT ALL TO CLECs.

Commenting parties recommend varying degrees of coverage for the application of performance measures and standards, ranging from none at all (or, if measures and standards are adopted, to all local service providers, both ILEC and CLEC), to Tier

¹⁰ See, e.g., Sprint, p. 3; AT&T, p. 16; Comptel, p. 3; Time Warner/XO, pp. 4, 15; WorldCom, p. 6.

¹¹ As Sprint explained (p. 3), RBOCs currently can provide special access services directly to end user customers. If such service is provided in a manner superior to that available to IXCs that obtain special access from the RBOC on behalf of the end user customer, the customer will be left with the impression that its IXC is inefficient and will perhaps be more inclined to choose the RBOC when the RBOC is in the position to offer long distance service.

¹² See n. 7 *supra*.

1/Class A ILECs, to RBOCs versus non-RBOC ILECs. As discussed below, whatever performance measures are adopted should apply only to ILECs. Furthermore, the Commission should adopt different special access performance standards for RBOCs than for non-RBOC ILECs.

A. There is No Basis for Subjecting CLECs to Performance Measures.

The RBOCs assert that since the special access market is competitive (an assertion shown to be incorrect in Section I *supra*), no Commission-mandated performance measures or standards are necessary. However, if the Commission does insist on adopting special access performance measures or standards, the RBOCs argue that such measures should be applied to all local service providers, both incumbent and competitive, to avoid unduly handicapping the RBOCs.¹³

There is no merit to the recommendation that CLECs be subject to Commission-mandated performance measures and standards. CLECs and CAPs offer service as an alternative to that provided by the ILECs; any customer that is not satisfied with the quality of service provided by the CLEC/CAP may revert, almost universally, to the ILEC. (The reverse, of course, is not true: a customer dissatisfied with service provided by an ILEC does not always have a competitive alternative to choose.) Thus, there is no compelling market need to subject CLECs or CAPs to performance measures or standards; the market imposes whatever discipline is required on such carriers.

Furthermore, CLECs and CAPs (unlike the RBOCs) generally do not have the back office infrastructure necessary to comply with Commission-mandated performance

¹³ See, e.g., SBC, p. 4; Verizon, p. 3; BellSouth, p. 12.

measures and standards. The costs of developing such capability are likely to be extremely high (especially in relation to the size of the CLEC's overall operations), and would certainly outweigh any possible benefit gained from subjecting competitive carriers to performance measures and standards. As the Commission noted in the instant NPRM (para. 15) in relation to small, rural or midsized ILECs, "reporting obligations may require carriers to modify existing computer systems to collect the necessary data, and...there may be a certain level of expense involved in generating performance measurements and statistical analyses." These very legitimate concerns are of equal importance to CLECs and CAPs.

B. Different Performance Standards Should Apply to RBOCs than to Non-RBOC ILECs.

Echoing a sentiment reflected in the NPRM (para. 15), there is broad agreement that whatever special access performance measures and standards are adopted should be applied to a limited group of ILECs. AT&T rightly points out (p. 34) that "because an ILEC's ability to affect competition generally is in part a function of its size, the need for performance standards, measures, and reporting requirements may reasonably vary by carrier size." AT&T cites Section 251(f) of the Act, "which represents a determination by Congress that the different circumstances of the smallest ILECs may warrant a lighter regulatory touch" (*id.*). Metropolitan Telecommunications, citing among other things the fact that there are "significant differences between ILECs," concludes that "[i]t is not possible to design a national set of metrics, which will be equally appropriate for all the competitive situations that currently exist in the United States" (pp. 2-3). Several groups representing the smallest ILECs assert that it would be prohibitively expensive for these carriers to develop and administer the systems to measure special access provisioning and

maintenance performance.¹⁴ Sprint points out (pp. 12-14) that there are tremendous financial and operational differences between the RBOCs and the independent local telephone companies; that there is no evidence to suggest that non-RBOC ILECs are engaging in anti-competitive behavior; and that IXC and CLEC presence in non-RBOC territories is considerably more limited than in RBOC regions. And, the New York DPS notes (p. 3) that the costs of complying with federal performance measures “may outweigh the benefits” for small carriers (but not so Verizon, which “has reported on its provisioning of special access services in NY for years and should be able to readily measure and report service quality under our recently modified guidelines”).

Given all these considerations, it would seem clear that the benefit/cost ratio is maximized by limiting the application of special access performance standards to the largest ILECs. There is, however, some dispute as to what the cut-off point should be. The Joint Competitive Industry Group, a coalition of 16 IXCs, CLECs and end users, has recommended that its proposed list of performance measures and standards be applied to all Tier 1/Class A ILECs. Sprint feels that this approach is overly inclusive, and

¹⁴ See, e.g., Frontier and Citizens, p. 4 (“because of the wide variations among ILECs in their systems, data, and processes, a “one size fits all” plan would be costly to the point of confiscation, because it would require a reworking not only of the ILECs’ information technology systems but also of their underlying business processes”); Independent Telephone & Telecommunications Alliance, pp. 3, 7 (performance measures impose disproportionate burden on small and mid-sized ILECs which generally lack automated OSS systems); NECA/OPASTCO, p. 3 (vast majority of rural ILECs lack technical capabilities to implement special access measurement and reporting requirements); NTCA, p. 3 (standards would be “extremely burdensome” for small rural ILECs); Rural ILEC Coalition, pp. 2-3 (because rural ILECs have higher operating and equipment costs, lower subscriber densities, smaller exchanges and limited economies of scale, new measurement and reporting requirements would be very burdensome and expensive).

continues to believe that the appropriate dividing line is RBOC versus independent local telephone companies.

The Tier 1/Class A distinction was adopted decades ago for accounting purposes, and more recently has been largely replaced with a RBOC/non-RBOC distinction. Most obviously, Sections 271-276 and their implementing regulations apply only to the Bell Operating Companies. In addition, the Commission has, over the past decade, increasingly distinguished between “large” ILECs (the RBOCs and GTE), and small and mid-sized ILECs (such as Sprint). The Commission required price cap regulation for the BOCs and GTE, and permitted other ILECs to elect price cap regulation.¹⁵ In its *ARMIS Reductions Report and Order*, the Commission reduced the accounting requirements for mid-sized companies and allowed them to maintain their financial ARMIS accounts on a Class B level.¹⁶ In the *Accounting Reductions Report and Order*, the Commission allowed mid-sized ILECs (most of them Tier II Class A carriers) to submit cost allocation manuals (CAM) based on Class B accounts, and to obtain an attest audit every two years in lieu of an annual financial audit.¹⁷ Emphasizing that the RBOCs are “significantly larger than the remaining Class A companies” in terms of revenues and access lines, the Commission further reduced mid-sized ILECs’ accounting and reporting requirements in the *2000 Biennial Regulatory Review Order*, eliminating the annual CAM filing for mid-sized carriers, the requirement that CAMs of mid-sized carriers be subject to an attest

¹⁵ *Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd 6786 (1990).

¹⁶ *1998 Biennial Regulatory Review - Review of ARMIS Reporting Requirements*, 14 FCC Rcd 11443, 11449 (para. 11) (1999).

¹⁷ *1998 Biennial Regulatory Review – Review of Accounting and Cost Allocation Requirements*, 14 FCC Rcd 11396, 11406-07 (paras. 21-22) (1999).

audit every two years (instead, mid-sized carriers must file an annual certification stating that they are complying with section 64.901 of the Commission's rules), and the requirement that mid-sized carriers file the ARMIS 43-02, 43-03 and 43-04 Reports.¹⁸ And, in the *CALLS Order*, the Commission adopted a different target rate for average traffic sensitive interstate access charges for the BOCs and GTE, than it did for mid-sized LECs.¹⁹

The Commission correctly based its decisions to treat the BOCs and independent local telephone companies differently in the above-referenced proceedings based in large part on the significant differences in their size and in operating territory characteristics.²⁰ The same rationale applies in the instant proceeding, and the Commission should accordingly adopt more stringent special access performance standards for the RBOCs than apply to independent local telephone companies.

III. FURTHER REFINEMENTS ARE NEEDED TO WHATEVER PERFORMANCE METRICS ARE ADOPTED.

Although there remains disagreement over which carriers should be held to what special access performance standards (see Section II *supra*), there was substantial agreement about what performance areas should be measured among parties that did submit a list of proposed metrics. Both Sprint and the Joint Competitive Industry

¹⁸ 2000 Biennial Regulatory Review-Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers, Phase 2, CC Docket No. 00-199 (FCC 01-305), released November 5, 2001, paras. 185-195.

¹⁹ Access Charge Reform, CC Docket No. 96-262, 15 FCC Rcd 12962, 13029 (para. 162) (2000)

²⁰ Sprint Local, with its low share of national interstate special access revenues (approximately 2%) and its dispersed and largely rural operating territories, resembles a "small" LEC far more than it does an RBOC.

Group's proposed metrics cover ordering, provisioning, and maintenance and repair,²¹ and with a few exceptions, there is substantial overlap in the two lists (see Section A below). Upon review of the proposed metrics, Sprint believes that an additional refinement relating to "large" orders (orders involving multiple circuits in the same central office) also should be made (Section B below).

A. The Performance Measures Proposed by Sprint and the Joint Competitive Industry Group Are Broadly Consistent.

Sprint agrees with the Joint Competitive Industry Group that ordering, provisioning, and maintenance and repair should all be measured,²² and there is significant overlap in the measures proposed by each party. However, Sprint takes exception to two of the measures included in the Joint Industry Plan (JIP):

- The FOC Receipt Past Due measure (JIP-SA-2) "gauges the magnitude of late FOCs" (JIP, p. 5). Sprint agrees on the importance of timely FOCs; however, an ILEC which fails to satisfy the FOC receipt standard (JIP-SA-1) will be penalized a second time under JIP-SA-2. This sort of "double jeopardy" should not be allowed, and thus JIP-SA-2 should be deleted.
- Offered Versus Requested Due Date (JIP-SA-3) "reflects the degree to which the ILEC is committing to install service on the CLEC or IXC Carrier Requested Due Date (CRDD), when a Due Date Request is equal to or greater than the ILEC stated interval" (JIP, p. 6). As an initial matter, it is not clear what is meant by "the ILEC stated interval." Whether interpreted to mean "standard interval" or "minimum interval," performance on such a measure is

²¹ See Sprint Appendix A, and *ex parte* presentation of the Joint Competitive Industry Group dated January 22, 2002.

²² However, Sprint does not support the Joint Competitive Industry Group's recommendation that its proposed standards be applied to all Tier 1/Class A ILECs (see Section II.B above), and Sprint is not taking a position at this time on the reasonableness of the Joint Competitive Industry Group's overall proposed standards. While Sprint agrees that non-RBOC ILECs should be subject to some performance standards, we would emphasize that those standards should be less stringent than the standards applicable to the RBOCs. As Sprint explained in its initial comments (p. 11), carriers with rural, non-contiguous local operations face significant resource and geographical constraints which are of far less concern to the RBOCs.

not entirely within the control of the ILEC, and this proposed measure should accordingly be deleted. The only way for the ILEC to perform well on such a measure would be to commit to the requested due date 100% of the time. In such a scenario, committed due dates would be synonymous with requested due dates. On time performance as measured in the proposed JIP-SA-4, On Time Performance to FOC Due Date, would actually be a measure of on time performance to customer requested due date, since JIP-SA-3 would place the incentive on the ILEC to commit to the customer requested date 100% of the time. Thus, this measure would incent the ILEC to commit to dates even when those dates cannot be met (and thereby fail on JIP-SA-4), or to increase “stated intervals” so as to become meaningless. Sprint regularly commits to customer requested due dates, when those dates are achievable.

Sprint also recommended adoption of metrics to cover reject timeliness, order completion notification timeliness, percentage of jeopardies, bill timeliness and billing accuracy. Given the resources Sprint (and presumably other access customers as well) expend on auditing special access bills, and disputing those we believe to be incorrect, Sprint continues to believe that some effort must be made to hold the RBOCs accountable for rendering accurate and timely bills.

Finally, JIP-SA-4 (On Time Performance To FOC Due Date) includes as a business rule an exception for situations “beyond the normal control of the ILEC that prevents the ILEC from completing an order, including...connecting company...not ready” (JIP, p. 7). Sprint agrees that such an exception is reasonable and warranted, and would simply add that the connecting company that is responsible for any delay must include that situation in computing its performance results. In other words, the controlling carrier must accept responsibility for its own delays.

B. Large Order Exclusion

One area in which all of the proposed metrics need refinement relates to large orders submitted to a local carrier. From time to time, it is likely that special access customers will have a large volume of orders to be processed simultaneously. For

example, an IXC may need to convert large quantities of existing special access circuits when it moves an existing POP, establishes a new POP, rehomes circuits from ILEC-provided transport to alternative arrangements, or when it converts special access circuits to UNEs. IXCs (and others) need prompt, responsive implementation of large orders to meet their customers' needs and to avoid added costs of, *e.g.*, maintaining duplicative POPs for extended periods. At the same time, processing large orders can impose substantial burdens on ILECs, particularly if they do not have adequate advance notice to enable them to plan for fulfillment of the order. Thus, it would be unreasonable to expect an ILEC to treat an order involving hundreds of circuits in the same timeframe as an order for a single circuit, absent adequate advance warning. Insofar as Sprint is aware, none of the proposed metrics lists large orders as an exclusion; therefore, an ILEC which is unable to handle a large order would be subject to penalty. Sprint suggests that large orders be considered an exclusion, subject to the following.

- A large order is defined as the larger of either (a) 5 orders per day, per central office; or (b) an order that is 50% greater than the carrier's average daily order size for the 180 days preceding the order.
- To ensure that the legitimate business needs of the IXC or other entity submitting a large order are met, large orders should **not** be considered an exclusion if the IXC provides the ILEC with an accurate (+/- 20%) forecast of the large order, in writing, at least six months prior to the order. This advance notice gives the ILEC ample opportunity to ensure that it has the resources on hand to process the large order.

Sprint believes that this refinement fairly balances the needs of the ILEC with those of its special access customer.

IV. CONCLUSION.

The information provided in the instant proceeding provides additional proof that the market for special access services is not yet competitive. This lack of competition,

coupled with the RBOCs' increasing incentive to engage in discriminatory activity, make clear that adoption of special access performance measures is fully warranted and in the public interest. However, there is no basis for extending performance monitoring to CLECs, and the Commission should adopt a "lighter regulatory touch" to non-RBOC ILECs, than apply to the RBOCs. Finally, while the performance measures proposed by Sprint and by the Joint Competitive Industry Group are broadly consistent, Sprint does take exception to two of the Coalition's proposals, and suggests a refinement to account for the processing of "large" orders.

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I hereby certify that a copy of the foregoing **REPLY COMMENTS OF SPRINT CORPORATION** was sent by United States first-class mail, postage prepaid, on this the 12th day of February, 2002 to the parties on the attached list.

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